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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE LUIS BUENO, JR.,

Defendant and Appellant.

B282517

Los Angeles County
Super. Ct. No. TA138412

APPEAL from a judgment of the Superior Court of Los Angeles County, Eleanor J. Hunter, Judge. Affirmed in part and remanded for resentencing.

David L. Polsky, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and Allison H. Chung, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Jose Luis Bueno, Jr., of first degree murder, attempted first degree murder, and possession of a firearm by a felon, finding true firearm and gang allegations. Bueno appeals, arguing that the trial court abused its discretion when it admitted recorded hearsay statements in which Gilbert Salazar implicated Bueno during a jailhouse conversation with a paid undercover informant. Bueno also argues he is entitled to a remand for the trial court to exercise its discretion whether to strike the firearm enhancement. We affirm the judgment and remand for the trial court to exercise its discretion.

BACKGROUND

On November 9, 2012, Jose Corona drove his girlfriend Michelle Ruiz and Luis Rivera to a Walgreens, to pick up a prescription for Ruiz. Rivera (“Crow”) and Corona were members of the Lynwood Tiny Locos, and the Walgreens was in Tiny Locos territory.

Salazar and his girlfriend were entering the drugstore. The tattoo on the back of Salazar’s shaved head identified him as a member of Young Crowd, a rival gang. Rivera suggested, “let’s go hit that guy up,” but Corona declined.

Nevertheless, as Corona and Ruiz walked toward the entrance, they ran into Salazar and his girlfriend. Corona told Ruiz to get back into the car. Rivera got out of the car and the two men confronted Salazar; Ruiz thought Corona asked Salazar where he was from. After a minute or two, Salazar and his girlfriend walked away. Rivera returned to the back seat of the car, and Corona and Ruiz entered the Walgreens.

Corona seemed nervous as they waited for the prescription, fielding calls from Rivera and telling him to wait. Corona told Ruiz Rivera was “ ‘acting really scared,’ ” and he left Ruiz in line

and went outside to check on Rivera. Two or three minutes later Corona phoned Ruiz and told her: “ ‘I’m gonna take a drive around the block really quick, and then I’ll come back and pick you up.’ ” Ruiz picked up the prescription and left the store. She called and texted Corona with no response. When she heard sirens and saw police activity and an ambulance rushing down the street, she got a sinking feeling, and she ran toward the activity. The block was taped off, Corona’s truck was in the middle of the road, and his bloody clothes were in the street. An onlooker said someone had been shot and described Corona’s tattoos. Ruiz asked the onlooker to take her to the hospital, where she learned Corona had been shot multiple times and was dead. One of the three gunshot wounds to Corona’s back was fatal, travelling through his lungs and heart.

Surveillance video showed a red truck pulling up in the right turn lane, next to Corona’s and Rivera’s car as it waited in the middle lane to turn left. Another truck momentarily blocked the view of Corona’s car. The red truck drove off, Corona’s car rolled backwards, and Rivera left the back seat of the car and ran from the scene. Rivera did not cooperate when the police interviewed him later.

The rolled-up front passenger window of Corona’s car had a bullet hole and bullet damage; at least three bullets had passed through. Three expended nine-millimeter bullet casings were on the street, and one nine-millimeter bullet was inside the front seat. Three more bullets were recovered from Corona’s body. All the bullets and the casings had been fired from the same firearm.

On June 17, 2015, two years and seven months later, Salazar was in custody on an unrelated felony. Detectives placed a paid undercover informant wearing a recording device in

Salazar's jail cell, to engage him in conversation to discover if Salazar had a connection to Corona's murder. During the conversation, Salazar described the details of the shooting, and identified his homie "Blade" (Bueno) as the shooter.

An amended information charged Bueno with the murder of Corona (count 3) and the attempted first-degree murder of Rivera (count 4), both with gang and firearm allegations, and possession of a firearm by a felon (count 7), with a gang allegation.¹ At trial, the jury heard the recordings of Salazar's conversations with the paid informant and, later, with Bueno. The jury convicted Bueno on counts 3, 4, and 7, and found true the gang and firearm allegations.² The jury deadlocked on the five remaining counts, which the trial court then dismissed. On the three counts of conviction, the trial court sentenced Bueno to life in prison without the possibility of parole plus 25 years to life for the first degree murder of Corona (count 3); a consecutive life term with a minimum of 15 years in prison for the attempted first-degree murder of Rivera (count 4); and a consecutive seven-year prison term for felon in possession (count 7).

¹ The eight-count information alleged five additional counts related to shootings in September and December 2006, which are not relevant to this appeal.

² Salazar was tried separately and convicted of first degree murder, attempted willful, deliberate, premediated murder, and shooting at an occupied motor vehicle, with gang and firearm allegations, all related to the murder of Corona. Division 4 of this court affirmed his conviction and remanded for the trial court to exercise its discretion regarding the firearm enhancement. (*People v. Salazar* (Aug. 1, 2018, B280129) [nonpub. opn.])

DISCUSSION

1. *The trial court did not abuse its discretion when it admitted Salazar's statements identifying Bueno*

Bueno filed a motion in limine to exclude Salazar's hearsay statements to the jailhouse informant implicating "Blade" (Bueno) in Corona's murder, arguing the statements were not admissible as against Salazar's penal interest and were unreliable. The prosecution filed a motion to admit portions of Salazar's interview as against his penal interest, including his statements that the shooter asked Salazar to identify the target and that the shooter was "Blade."

The trial court listened to the recordings and conducted a hearing on the motions. The court and all counsel agreed that Evidence Code section 1230's³ first requirement, unavailability, was met. (Salazar was then awaiting trial.) The court focused on whether Salazar's statement created a risk of criminal liability. While Salazar initially "doesn't come out with it," somewhere past the middle of the interview he began to describe the encounter in the parking lot which was the motive for the shooting, and "talk[ed] about how they got to the point where the individual pulled out a gun and shot. [¶] And that individual, at the very end, was identified as 'Blade' [Bueno] So he also is worried . . . whether he's going to beat this [¶] So I think it shows that he's clearly aware that his statements are going to subject him to criminal liability." The prosecution argued that the statement did not attempt to minimize or to shift blame and was therefore reliable, including Salazar's description of how

³ Unless otherwise specified, all subsequent statutory references are to the Evidence Code.

he went to get help, “and that was Blade.” Defense counsel countered that Salazar “clearly . . . attempt[ed] to shift the blame for the shooting to someone else.”

The trial court described the conversation as “very casual.” Salazar did not minimize his role in the shooting. Toward the end, he identified “Blade,” whom he seemed to admire. “I’m going to find that, under 1230, that it does fall under a declaration against penal interest” The defense renewed its objection.

Salazar appeared at Bueno’s trial and invoked his Fifth Amendment right not to testify, as his conviction was on appeal and not yet final. Out of the jury’s presence, Bueno’s counsel again objected to the introduction of the recording. The jury heard the recording in full.

a. *Salazar described Corona’s murder during
his conversation with the jailhouse informant*

Deputy Sheriff Todd Anderson testified that on June 17, 2015, he set up a *Perkins*⁴ operation, placing a paid undercover agent (AV), wearing a recording device, into the same jail cell as Salazar (who was in custody on an unrelated charge), to engage Salazar in conversation and attempt to get information on Corona’s murder. The sole target of the investigation was Salazar; Deputy Anderson had no idea that Bueno was involved. AV had been told what gang Salazar was from, but nothing about the specific crime, because law enforcement knew so little. The transcript of the recording of Salazar’s conversation with AV is 87 pages long. We describe the relevant detail.

The two men engaged in general conversation. Salazar said he was in for driving a car without the consent of the owner.

⁴ *Illinois v. Perkins* (1990) 496 U.S. 292.

Salazar told AV he was from “the Crowd,” and AV told him “Wicked” was in custody. Salazar talked about his committed relationship with his girlfriend and their two children. AV then said he was “busted” for attempted murder. Salazar explained he was worried about doing time because his girlfriend needed him.

Detectives removed Salazar from the cell to question him. When they brought him back, they suggested “Crow” (Rivera) was ratting on Salazar. They were interviewing Salazar’s girlfriend next, and if their stories didn’t match, “then it’s even going to be a bigger issue.” After the detectives left, Salazar told AV “it’s about a murder that happened,” and witnesses were implicating him, although Salazar did not appear in the photographs the detectives showed him. The detectives said someone told them some “fools . . . banged on me in front of my girl,” and after Salazar took off, “later on . . . somebody, supposedly, came and shot them fools up and took off.” AV warned Salazar: “They’re gonna try to take the kids, fool.”

Salazar said the shooting was in 2012, and he didn’t know why his name was coming up now. AV suggested someone had informed to the authorities. Salazar intended to deny everything, “’[c]ause it’s true, man. You know, I mean, I wasn’t fuckin’ there.” He was worried because “the DCFS” had taken his kids before. Salazar agreed with AV that someone must be talking to the police, but “I never ran into these cats,” and “they have to fuckin’ prove that shit.” Salazar worried they would charge him anyway. AV suggested he could claim self defense, as AV had in the past. Salazar worried his girlfriend might say something, and continued to insist he didn’t do anything. Salazar told AV detectives said enemy gangs were involved and the “fool” was from “Lynwood something.”

Detectives briefly removed AV from the cell. When he returned he told Salazar the detectives had been looking at a laptop and “high-fiving.” Salazar insisted the detectives had nothing on him, and AV responded they would never tell him what they had until they went to court. After they discussed why AV was in custody, they returned to Salazar’s situation. AV surmised they had something on Salazar and just needed more information. “Everybody in jail is innocent,” but the cops had evidence, and if they found the murder weapon, “you’re done.” AV said the best thing Salazar could hope for was a deal, and he shouldn’t “make up some shit”; Salazar responded he still wanted to know what “they’re gonna hit me with.” He worried they might lock up his girlfriend.

The two men discussed the televisions in the cells, Salazar’s cellmates, jail routines, and Salazar’s encounters with other gangs. The detectives removed Salazar again. When he returned, Salazar told AV the detectives asked him about whether anyone approached him at a Walgreens, and he had denied “the whole thing.” The detectives had asked Salazar if “these guys” threatened him. Salazar had not yet claimed self-defense, because he wanted to know “everything that they got before I say anything.”

Two-thirds of the way into the transcript, Salazar first admitted involvement in the incident at the Walgreens. “[W]e went out there, right? And these fools [with a girl] came up running on me and my lady,” asking them where they were from. Salazar’s girlfriend told them “[w]hy don’t you have a little respect,” and Salazar asked them what was up. One of the men said “‘hey, this is my hood,’ ” and Salazar said “fuck you,” and

walked away. Salazar said the cop told him that “they took off, and they left that fool dead in the car” five blocks away.

Salazar then began to describe his involvement in the shooting. AV asked whether Salazar’s girlfriend was with him “when you—got off on them,” and Salazar said he was “solo.” AV asked “[h]ow did you guys run into each other again,” and Salazar said he went and found his “homie,” who said, “let’s go, fool.” They went looking for “them fools,” and when they found them they pulled up and gave it to them (“[p]ow, pow, pow, pow, pow, pow”), and took off. Salazar asked “where is their gun there,” and said “they know a little bit what happened. They’re not sure if it was me.” The “fools” who challenged Salazar were from Tiny Locos. One of them recognized Salazar and snitched, saying they were from Little Crowd and pointing out Salazar. “[T]hat fool” hadn’t seen Salazar’s face when he was “bustin’ on him,” but “all they have to say [is] it was me at the Walgreens,” because the cops were investigating the motive for the killing. Salazar said all the shells fell inside the car, and he “got rid of everything.”

Salazar said detectives had been working on the case but had never questioned him before. He thought the detective who questioned him was lying to try to convince Salazar to confess, and they were talking to his girlfriend next.

Salazar provided AV with more details. After the incident at the Walgreens, he told his girlfriend to wait for him there, telling her: “‘[I]f I don’t come back, it’s ’cause you already know what happened.’” He went to tell his homies what had happened, and “[m]y plan was to go back to Walgreens and fuck them niggas up.” But then “[t]his motherfucker pulled out a heat.” Salazar told him “‘why you do that for?’ No. We just—

we were gonna fuck these fools up, fool. That's when I'm, like, fuck it, fool. It is what it is, fool, and fuckin' took off." He wondered if the detectives "have to have a gun," and said the gun was gone: "The first day—got rid of it."

AV asked how many were in the car, and Salazar said one was dead and the other was talking to the police. AV said: "That's an eyewitness, my boy. You should've gunned that nigga, too." Salazar agreed that the eyewitness was probably talking to the detectives. "[T]his shit's been fuckin' haunting me, fool, for a long time." Everyone had been talking about the shooting, but he didn't tell anyone he was involved.

AV told Salazar he was in a gang, and described shooting someone. Salazar said he didn't usually give "those homies" a hard time. At the time of the Walgreens incident, he and his girlfriend were homeless. They had gotten the kids back and had gone to Walgreens to buy a few things for his girlfriend to use at the shelter. Then "these motherfuckers pass us up" and asked Salazar where he was from. Salazar was in his own hood and got "heated," so he took off walking, telling his girlfriend "I gotta do what I gotta do."

Salazar told his "homies let's go—go head up with these fools real quick. Fuckin', the homie end up bustin' on them fools." "[M]y homie had a car, fool. We jumped in the car, fool. And when we were leaving the fucking spot where we was at where I just last seen them, we're leaving. We're trying to go like this, trying to see when we go back over there, we're gonna go creep up. . . . They're, like, 'where are these fools at?' I'm, like, 'they're at the Walgreens.'" They had to go around to get to the Walgreens, and were waiting to turn at a red light. "And them fools are—and they got the red light . . . they're like this waiting."

Salazar was only a few cars away, and “we just looking at each other I was telling them what happened.” When the light turned green, he said “hey, fool, there they go right there,” and they pulled up to the car stuck in traffic. “And that fool just like—he rolls the window. And them fools they were just, like, looking straight ahead, I guess. . . . It’s, like, is it that fool? Is that him? I was, like, it was the car. It was the ride. Yeah, it is him. So if we just, like, pow, pow, pow, pow, pow, pow, pow, pow, pow, pow. We took off, fool. We’re taking off.” They hit a corner and passed the Walgreens. They saw an undercover cop car, “and so that fool I told him, ‘make a left, fool. Make a left. We can go through the alleys.’” They made a left, saw more cops, and took off. The undercover cop car was in the photographs the detectives showed Salazar; he had seen it around the neighborhood.

Salazar said the detectives had been following him but did not have enough evidence, and AV replied that something must have changed. Salazar thought it might be “that one fool,” and AV suggested Salazar could discredit him as a “cholo, too,” or a drug addict with a record. Salazar had told the detective he wasn’t at the Walgreens, and had kept a straight face: “I don’t have to explain shit to him.” AV described his own interrogation, and then repeated he’d seen the detectives looking at a laptop and they probably had video from Walgreens. Salazar asked what he should say if he was on the video, and AV suggested “them fools were being the aggressive people.” Salazar said “but then they’re gonna be, like, well, why the fuck did he die?” AV suggested he “flip it around” and say Corona and Rivera came back looking for Salazar, instead of him going looking for them. The detectives didn’t know “you went back with the homie.”

Salazar said: “Hey, these fools know they were trippin’ on me, but they want to know who the fuck killed these fools.” AV asked if “they want you to rat on your homie,” and Salazar said “No. I’m not gonna rat on my homie, fool. . . . [T]hat’s the first motherfucker I call to help me out.” AV asked if his homie was on the streets or in jail, and Salazar said he was in custody “for some other shit.” AV asked: “Don’t tell me it’s Wicked?” Salazar said no; his homie wasn’t right here, but “in super Max.” AV asked “You think I’ll run into him?” and Salazar answered: “Hopefully.” AV asked “[w]hat they call him,” and Salazar answered “Blade.” When AV suggested “Blade? That way I’ll tell that fool, like, ‘hey, fool, they—they fuckin’—,’ ” Salazar said no: “Then that fool is gonna be, like, ‘why you telling people my shit, you know?’ ” The conversation ended when deputies removed Salazar from the cell.

b. *The statements about Blade were against Salazar’s penal interest*

Section 1230 states: “Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, . . . so far subjected him to the risk of . . . criminal liability, . . . that a reasonable man in his position would not have made the statement unless he believed it to be true.” To gain admission of hearsay evidence as a declaration against penal interest under section 1230, “ [t]he proponent of such evidence must show that the declarant is unavailable, that the declaration was against the declarant’s penal interest when made and that the declaration was sufficiently reliable to warrant admission despite its hearsay

character.’ ” (*People v. Grimes* (2016) 1 Cal.5th 698, 711 (*Grimes*).)

Bueno concedes that the recording contained statements by Salazar that were against his penal interest, including his descriptions of the confrontation at the Walgreens, his seeking out a fellow gang member to find the two men, and his participation in the resulting fatal shooting. Bueno argues the trial court’s admission of the final portion of Salazar’s statement implicating “Blade” in Corona’s murder was an abuse of discretion, because those specific statements were not sufficiently against Salazar’s penal interest. We disagree.

In *Grimes*, our Supreme Court clarified the long-standing rule that section 1230 does not allow the trial court to admit “ ‘any statement or portion of a statement not itself specifically disserving to the interests of the declarant.’ ” (*Grimes, supra*, 1 Cal.5th at p. 713, quoting *People v. Leach* (1975) 15 Cal.3d 419, 441) (*Leach*). “[*Leach*] explained that those portions of a confession inculcating others are not as inherently trustworthy as those portions that are actually disserving to the declarant’s interests.” (*Grimes, supra*, 1 Cal.5th at p. 713.) “[T]he court may take into account not just the words but the circumstances under which they were uttered, the possible motivation of the declarant, and the declarant’s relationship to the defendant.” (*Grimes, supra*, 1 Cal.5th at p. 711.)

Grimes explained that California cases “have taken a contextual approach to the application of the *Leach* rule. We have applied *Leach* to bar admission of those portions of a third party’s confession that are self-serving or otherwise appear to shift responsibility to others. [Citations.] But we have permitted the admission of those portions of a confession that, though not

independently disserving of the declarant's penal interests, also are not merely 'self-serving,' but 'inextricably tied to and part of a specific statement against penal interest.'" (*Grimes, supra*, 1 Cal.5th at p. 715.) "[T]he nature and purpose of the against-interest exception does not require courts to sever and excise any and all portions of an otherwise inculpatory statement that do not 'further incriminate' the declarant. Ultimately, courts must consider each statement in context in order to answer the ultimate question under Evidence Code section 1230: Whether the statement, even if not independently inculpatory of the declarant, is nevertheless against the declarant's interest, such that 'a reasonable man in [the declarant's] position would not have made the statement unless he believed it to be true.'" (*Id.* at p. 716.) Noting that "context matters," the court concluded that statements that "tended to underscore [the declarant's] responsibility for the crime, rather than diminish it," were admissible as declarations against interest. (*Id.* at p. 717.)

"[S]tatements by a nontestifying codefendant that implicate the defendant, even by name, may be admissible if they are disserving to the codefendant's interest and are not exculpatory, self-serving, or collateral." (*People v. Almeda* (2018) 19 Cal.App.5th 346, 364.) The question before us is whether Salazar's statements implicating Bueno by his moniker "Blade" are unreliable, as "portions of a third party's confession that are self-serving or otherwise appear to shift responsibility to others." (*Grimes, supra*, 1 Cal.5th at p. 715.) Bueno argues that Salazar's identification of "Blade" was an attempt to distance himself from the shooting and to shift the responsibility to Bueno as the actual shooter. Considering Salazar's statements in context, we conclude they were self-inculpatory, and the trial court did

not abuse its discretion when it admitted the statements into evidence.

Salazar's conversation with AV began casually. Salazar identified himself as from "the Crowd" and AV told him "Wicked" was in custody. The detectives removed Salazar to question him and returned him to the cell, suggesting Rivera might be ratting on Salazar. Salazar then told AV witnesses were implicating him in a 2012 murder, describing general facts consistent with the Walgreens confrontation and Corona's shooting by "somebody." Salazar insisted he wasn't there, and the detectives had no proof. Nevertheless, he was worried his girlfriend might say something, and concerned he could lose custody of their children. Salazar told AV rival gangs were involved, claimed membership in Young Crowd, and said the rival gang was from Lynwood.

After AV was removed from the cell and returned, AV suggested the detectives might have been viewing surveillance video of Salazar, and warned that if they found the murder weapon, Salazar was "done." AV suggested Salazar try to strike a deal with the detectives. Salazar said he wanted to know what charges he might face.

After the detectives again removed Salazar for questioning and returned him to the cell, Salazar told AV he had denied any involvement in the confrontation at Walgreens. He then implicated himself for the first time to AV, saying he had gone to Walgreens with his girlfriend, and described the confrontation with Corona, Rivera, and Ruiz. He also described the shooting, saying he went "solo" to find his "homie," who said "let's go," and they went looking for "them fools." When they found them, they pulled up and gave it to them; Salazar imitated six gunshots. One of the "fools" had recognized Salazar, and snitched. Salazar

thought all the shells fell inside the car and he had gotten rid of everything. At this point, Salazar had inculpated himself as the instigator of the pursuit and as present at the shooting, identified an eyewitness, and admitted he got rid of the evidence.

Giving more detail, Salazar said he went to tell his homies after the Walgreens confrontation, planning to return and fight. But then one of his homies pulled out a gun, and after Salazar asked why and said he just was “gonna fuck these fools up,” Salazar accepted it and “took off.” He also said the gun was gone: “The first day—got rid of it.” Now Salazar had admitted that after his homie pulled out a gun, he accepted its use, and the gun was discarded the next day.

Salazar theorized that the man in the car with Corona (Rivera) had seen him and was talking to the police. That had been haunting him. He again described the shooting, saying they had jumped in his homie’s car and headed to the Walgreens. Salazar saw Corona’s car waiting in traffic and told his homie “there they go right there.” When they pulled up next to Corona’s car, his homie asked: “Is that him?”, and Salazar identified Corona. Salazar imitated ten gunshots. They “took off” and managed to evade police. These statements increased Salazar’s culpability by describing how Salazar both directed his homie to Corona’s car, and pointed out Corona as the target.

AV suggested that Salazar could try to discredit Rivera, or say Corona and Rivera came back and went after Salazar. AV asked if the detectives were trying to get him to “rat on your homie.” Salazar answered he would not do that, because his homie was the first person Salazar would call to help him out. Salazar had already inculpated himself in seeking out his homie to go after Corona and Rivera, accepting the homie’s drawing

of the gun, pointing out Corona's car, and then Corona himself, as the target, and getting rid of evidence after the shooting. With these statements, he went further, saying the homie was the one whose assistance he could count on the most.

The challenged statements about "Blade" occurred at the very end of the conversation. Salazar told AV his homie was in custody for something else. AV asked if the homie was "Wicked," and Salazar said no; his homie was in custody "in super Max." He hoped AV would run into him. AV asked his name, and Salazar said "Blade," but warned AV against telling Blade about their conversation, because Blade would challenge Salazar "for telling people [Blade's] shit."

In context, Salazar's statements about "Blade" were not self-serving, or an attempt to exculpate himself and shift the blame to "Blade." This is not a case in which the declarant changed his story during the conversation to minimize his responsibility by identifying others as most culpable, doing "little to increase [his] criminal culpability, and serv[ing] primarily to 'minimize [his] role and place the blame . . . on [his] accomplice[s].'" (*People v. Gallardo* (2017) 18 Cal.App.5th 51, 74.) In that case, the declarant "provided conflicting versions of what had occurred, further mitigating his role in the offense with each successive telling." (*Id.* at pp. 75-76.) In this case, each retelling by Salazar gradually increased his culpability, and the final statements about Blade were further inculpatory.

In *People v. Cortez* (2016) 63 Cal.4th 101, the declarant's hearsay statement identified the defendant by name as the driver of the car involved in a shooting. Because the declarant knew that the defendant was in custody, "[h]e thus also knew that, by identifying her, he was increasing the likelihood that evidence

connecting him to the shooting would be found.” (*Id.* at p. 127.) The declarant’s “identification of defendant by name, viewed in context, specifically disserved his penal interest” (*Ibid.*)

Here, Salazar volunteered that his homie was in custody. When he identified his homie as “Blade,” and then specified where “Blade” was in custody, Salazar provided crucial inculpatory information that the detectives did not have; the identity of the shooter, and even his location. It was against Salazar’s penal interest to describe the shooter’s gang, his gang moniker, and where he was in custody. Salazar’s statements gave the detectives easy access to the person with the most information about Salazar’s criminal culpability, and in the best position to confirm Rivera’s identification of Salazar as with Bueno at the time of the shooting. Further, Bueno’s known gang membership in Young Crowd would provide evidence to support a true finding on a gang enhancement allegation against Salazar. By naming “Blade,” Salazar “‘provided self-inculpatory information that might have enabled the authorities to better investigate [Salazar’s] wrongdoing.’” (*People v. Cortez, supra*, 63 Cal.4th at p. 127.)

Bueno also argues that when Salazar described “Blade” as the shooter he intended to exculpate himself. But even when a declarant describes his role as smaller than his codefendant’s role, exclusion is not required, if the statements disserve the declarant’s interest and are otherwise reliable. (*People v. Smith* (2017) 12 Cal.App.5th 766, 792.) Here, Salazar described himself as leaving the Walgreens to find a homie to help him search for the rival gang members who had disrespected him. He also described his initial surprise when Bueno pulled out a gun, followed by his acceptance of the presence of a firearm, his

direction of the car chase, and his identification of Corona as the target. Salazar did not minimize his involvement.

Although Bueno does not argue on appeal that Salazar's statements were otherwise unreliable, we note that one "indicator of the statements' reliability is they gave law enforcement significant details about the crime they did not have at the time." (*People v. Almeda, supra*, 19 Cal.App.5th at p. 367.) Salazar's identification of "Blade" resulted in important evidence for the prosecution. The detectives followed up on Salazar's identification, searched department records, and discovered that the Young Crowd gang member with the moniker "Blade" was Bueno, who was in custody on other charges. In July 2015, Salazar was placed in a room with Bueno and their conversation was secretly recorded. Just as the jury in this case heard the recording of the conversation between Salazar and Bueno, the recording was also in evidence at Salazar's trial. (*People v. Salazar, supra*, B280129.)

Salazar's statements implicating Bueno by his gang moniker disserved Salazar's penal interest and were not exculpatory, self-serving, or collateral. The trial court did not abuse its discretion when it admitted the statements.

2. *We remand for the trial court to exercise its discretion under Senate Bill No. 620*

Bueno argues that remand is necessary to allow the trial court to exercise its discretion whether to strike the firearm enhancement on count 3.

Bueno received a term of 25 years to life for the firearm enhancement under Penal Code section 12022.53, subdivisions (d) and (e)(1), imposed consecutive to his sentence of life without the possibility of parole on count 3, the first-degree murder of

Corona. Bueno argues that his case should be remanded to allow the trial court to exercise the discretion conferred under Senate Bill No. 620, effective January 1, 2018, to strike the section 12022.53 firearm enhancement.

We agree with Bueno that, as a defendant whose sentence is not yet final on appeal, he is entitled to the trial court's exercise of its discretion whether to strike the firearm enhancement, a discretion it did not possess when it sentenced Bueno in May 2017. At sentencing, "the trial court gave no indication whether it would exercise discretion to strike the firearm enhancement . . . if it had such discretion." (*People v. Billingsley* (2018) 22 Cal.App.5th 1076, 1081.) "[S]peculation about what a trial court might do on remand is not 'clearly indicated' by considering only the original sentence." (*People v. Almanza* (2018) 24 Cal.App.5th 1104, 1110-1111.)

We therefore remand to allow the trial court to decide in the first instance, at a hearing at which Bueno has the right to be present with counsel, whether to exercise its discretion to strike the firearm enhancement on count 3. (*People v. Rocha* (2019) 32 Cal.App.5th 352, 359-360.)

DISPOSITION

The matter is remanded for the limited purpose of allowing the trial court to consider, at a hearing at which the defendant has a right to be present with counsel, whether to exercise its discretion to strike the firearm enhancement imposed in count 3, under Penal Code section 12022.53, subdivisions (d) and (e)(1). In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.